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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of) CC Docket No. 95-116
Telephone Number Portability) RM 8535

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EXPEDITED PETITION FOR RECONSIDERATION

The National Exchange Carrier Association, Inc. (NECA)¹ hereby files a Petition for Clarification and/or Reconsideration regarding the Commission's *Third Report and Order* in the above captioned matter.²

I. Introduction and Summary

The Commission's Order raises a number of questions regarding accounting and recovery of number-portability-related costs that require clarification and/or reconsideration. Most importantly, immediate clarification is needed with respect to how incumbent local exchange carriers (ILECs) who do not have local number portability (LNP)-capable switches may recover their LNP-related costs.

As discussed in more detail below, the *Order* permits companies to recover their LNP-related costs exclusively through a new, federally tariffed end user charge, and prohibits companies from imposing this new charge until they offer LNP. However, *all* companies, even

¹ NECA is a private Delaware corporation, a not-for-profit association of over 1,400 incumbent local exchange carriers. Pursuant to the Commission's Part 69 rules (47 C.F.R. Part 69), NECA directly administers interstate access charge tariffs and revenue pools on behalf of its exchange carrier members, as well as various federal and state support programs, among its other activities.

² Telephone Number Portability, *Third Report and Order*, FCC 98-82, CC Docket No. 95-116, RM 8533 (rel. May 12, 1998) (*Order*).

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those that do not offer LNP capability, will incur LNP-related costs. By limiting LNP cost recovery to a new federal end-user charge that can be assessed only by LNP-capable companies, the *Order* thus appears to prevent non-LNP companies from recovering their legitimate costs incurred as a result of supporting LNP in adjacent areas. As non-LNP companies will soon begin to incur LNP-related costs, clarification of how these costs should be treated and recovered is urgently needed. NECA recommends that, until the Commission develops a permanent cost-recovery mechanism for rate of return (ROR) LECs, the Commission permit non-LNP companies to use current accounting, separations and cost recovery rules for their legitimate LNP costs.

In addition, NECA believes that the Commission needs to consider more specifically how LNP costs should be recovered by small, ROR companies, including those participating in the NECA pools. NECA believes that cost recovery issues specific to these companies were not adequately considered in proceedings leading up to issuance of the *Order*,³ perhaps because most ROR companies will not be required to offer local number portability in the near term.⁴ NECA therefore recommends that the Commission seek additional comments focused specifically on how small ROR companies, including those that participate in the NECA pool, should recover their LNP-related costs once they deploy LNP.

Finally, the *Order* does not appear to specify a recovery mechanism for carrier-specific LNP costs that continue beyond the five-year recovery period. Ongoing costs include carrier

³ See *infra*, section II.B.

⁴ See Telephone Number Portability, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd. 7236 at ¶ 60 (1997) (allowing carriers to defer LNP until receipt of *bona fide* request).

contributions to LNP regional database administration, and continuing database query charges assessed upon N-1 carriers by other carriers. The Commission should specify a mechanism to recover such ongoing costs beyond the five-year period.

II. Discussion

A. The Commission Should Immediately Clarify How Small ROR ILECs Without LNP-Capable Switches Should Recover Their LNP-Related Costs.

The *Order* requires all telecommunications providers, including small ROR ILECs, to contribute to the cost of the seven regional Number Portability Administration Centers (NPACs).⁵ However, telecommunications providers may only recover these costs (through end-user charges beginning February 1, 1999) if they provide service from a LNP-capable switch.⁶ Currently, few of NECA's traffic sensitive (TS) pool members have LNP-capable switches. Thus, it is not clear how these ILECs will recover their costs for supporting the relevant NPAC.

The *Order* also allows ILECs to recover from N-1 carriers, via charges separate from the end-user charge, their carrier-specific costs directly related to providing prearranged and default query services involving an NXX with ported numbers.⁷ Most of NECA's TS pool participants have joint local calling agreements with larger ILECs who are, or will be, providing number portability. Once a number with an NXX is ported, the N-1 carrier must initiate queries to the number portability database for *all calls* placed to that NXX, to determine the correct routing destination. On a local originating call from a NECA TS end user customer, the NECA TS company would be the N-1 carrier required to query the database. In most instances, larger

⁵ *Order* at ¶¶ 87, 113.

⁶ *Id* at ¶ 143.

⁷ *Id* at ¶ 147.

LECs would be providing database query services to smaller, ROR companies and assessing charges for this service.

These usage-based charges may impose substantial costs upon small ROR ILECs. Yet, the *Order* does not specify how carriers that must purchase such services should recover their costs. In fact, the *Order* makes clear that ILECs may recover their carrier-specific LNP costs only through federally-tariffed end user charges, to be assessed only upon customers served from number-portability-capable switches. These provisions appear to prevent non-LNP-capable carriers from recovering LNP costs at all.⁸

The *Order* explains that “recovery from end users should be designed so that end users generally receive the charges *only when and where they are reasonably able to begin receiving the direct benefits of long-term number portability*.”⁹ NECA agrees that the end user LNP charges mandated by the *Order* should not be assessed upon customers in non-LNP-capable areas.¹⁰ As the *Order* recognizes, it would be unfair, and would make no sense, to require end users to pay this new charge in areas that are not served by competitive LECs.

⁸ An FCC Order that requires carriers to contribute to the support of number portability in adjacent regions, and at the same time specifically forbids carriers from recovering those costs in their rates, would plainly implicate the “takings” clause of the 5th amendment of the Constitution. See, e.g., *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

⁹ *Order* at ¶ 143 (emphasis added).

¹⁰ As discussed below, it is highly questionable whether customers in rural areas should be assessed new end user charges for number portability even after carriers begin to deploy LNP capability in their areas. NECA does not, however, seek reconsideration of the Commission’s *Order* insofar as it applies to carriers currently required to offer LNP. NECA does request that the Commission give further consideration as to whether this cost recovery approach should apply to small, rural ROR companies whose customers may face substantial local rate increases as a result of other, unrelated Commission decisions in the areas of access reform, separations reform and universal service.

But, if carriers in non-LNP areas may not recover their LNP costs via the new end-user charge, what other cost recovery mechanism is available? NECA believes that the only reasonable answer to this question, at least for an interim period pending further study of cost recovery issues for small ROR carriers, is for the Commission to permit non-LNP carriers to treat carrier-specific LNP costs in the same manner that other, similar network costs are currently treated. Specifically, the Commission should clarify that ILECs without a LNP-capable switch should continue to book and recover these costs through normal accounting and separations processes. For example, NPAC contribution costs and carrier-specific LNP data base query costs incurred by non-LNP-capable LECs could be treated in the same manner as other data base query charges, such as those associated with calls to "800" and "900" numbers.¹¹

Contrary to concerns expressed in the *Order*, NECA believes that this approach is completely consistent with the Act's requirement that LNP costs be recovered in a "competitively-neutral" manner, and will not unfairly burden interexchange carriers or other classes of customers.¹² Recognizing, however, that the Commission may eventually develop alternative means for non-LNP carriers to recover these costs, NECA suggests that carriers

¹¹ That is, these costs would be included in central office expense accounts and allocated between the jurisdictions on the same basis as central office investment, as specified in Parts 32 and 36 of the Commission's rules. See 800 Data Base Access Tariffs and the 800 Service Management System Tariff, CC Docket No. 93-129, *Report and Order*, 11 FCC Rcd 15227, 15257-69 (1996). To preserve the interstate nature of these costs, the Commission could (pending further study) direct ROR companies to directly assign them to the interstate jurisdiction, for assignment to the local switching element pursuant to Part 69 of the Commission's rules.

¹² Since this cost recovery approach would be applied only in areas where there have been no *bona fide* requests for local number portability, or where LNP is pending due to a *bona fide* request, there should be no concerns regarding potential adverse impacts on any competitors for local service provisioning. Moreover, under the accounting method recommended herein, LNP-related costs would be treated in the same manner as other, similar network costs.

maintain subsidiary LNP records so that these costs may be discretely identified.

B. The Commission Should Seek Additional Comments on LNP Cost Recovery Methods for Small ROR Companies.

NECA believes that it may be possible to develop administratively-feasible means for recovering LNP costs of small ROR companies, including those within the NECA pool environment, in ways that are consistent with both the competitive neutrality requirements of the 1996 Act and the Act's universal service objectives. Because these issues are so complex, however, NECA recommends that the Commission seek additional comments focused specifically on how small ROR companies, including those that participate in the NECA pool, should recover their LNP-related costs once they deploy LNP.

As noted above, most ROR companies will not be required to offer local number portability in the near term.¹³ Nevertheless, several portions of the *Order* appear to impose specific cost recovery requirements and prohibitions on *all* carriers, regardless of whether they deploy LNP capability, and regardless of size.

NECA believes that additional consideration should be given to LNP cost recovery issues as they apply to small, ROR LECs. As recognized in Commission orders establishing LNP implementation timetables, these small carriers face very different circumstances from those operating within the 100 largest MSAs. While the Commission notes in the *Order* that all carriers will share the burdens of LNP costs, the circumstances facing ROR LECs were not adequately considered in determining *methods* for recovering of those costs. The Commission does not discuss or mention the impact of the method of limiting recovery of costs to end user

¹³ See *supra*, n.4.

charges on smaller, ROR LECs facing vastly different circumstances.

Companies operating in the 100 largest MSAs are typically large, price cap LECs. Unlike these companies, small ROR LECs and their customers face substantial uncertainty with respect to the effects of various Commission proceedings on cost recovery methods. In its ROR access reform proceeding, for example, the Commission is considering changes to the way that non-traffic sensitive costs are recovered. These changes may result in increases in subscriber line charges (SLCs) for customers in rural areas. Imposition of Presubscribed Interexchange Carrier Charges (PICCs) on interexchange carriers operating in rural areas could have unknown, potentially adverse impacts on customers as well.

Changes to separations rules stemming from the Commission's proceedings on separations could move more revenue requirement to the local jurisdiction for these carriers, thereby increasing pressure on local rates in small ROR carrier's territories. Finally, although the Commission has correctly determined that changes in universal service funding methods for rural carriers should be deferred until at least 2001, small ROR carriers are concerned about the eventual effects of changes in universal service methodologies.

The combined effects of potential local rate increases resulting from separations reform, increased SLCs, new flat-rated charges imposed as a result of the Commission's access reform proceeding, and potential changes in universal service funding, may be very significant and burdensome for customers of small, rural ROR carriers. NECA believes that the Commission should thoroughly consider these effects prior to determining whether small, ROR carriers must apply new, additional end user charges for LNP cost recovery when they deploy LNP capability. Obtaining additional comments on these issues would permit the Commission and the industry

time to evaluate the combined effects of these changes, *prior* to imposing specific new cost recovery methods on small ROR companies and their customers.

Even if the Commission determines that end user charges must be assessed by small ROR companies when they deploy LNP capability, additional time and study is needed to resolve questions that will arise as to how these new charges should be assessed by companies that participate in the NECA pools.¹⁴ NECA pool participants are likely to implement LNP capability on different dates, and in different ways, resulting in varying five-year recovery cycles and different end user charge levels.¹⁵

Further consideration of cost recovery issues for ROR carriers will also enable the Commission to resolve additional issues associated with LNP. For example, while the Commission appears to limit recovery of LNP-related costs to a period of five years,¹⁶ certain costs, such as database query charges, and costs of operating the NPACs, will continue indefinitely. Clarification will be required as to how ROR ILECs will recover such continuing costs beyond the five-year cost recovery period.

III. Conclusion

Immediate clarification is needed with respect to how incumbent local exchange carriers (ILECs) who do not have local number portability (LNP)-capable switches may recover their

¹⁴ Although the Commission rejected its own proposed option to pool industry-wide number portability costs, *Order* at ¶¶ 122, 140, it did not specifically address the issue of NECA pooling nor did it specify how the end user charge will work for those LNP-capable ILECs who participate in NECA's TS pool, and who do not file their own interstate access tariffs.

¹⁵ Disparate costs arising from differing traffic volumes between NECA TS pool members and LECs with ported numbers are also among the conditions that could cause different end user rates.

¹⁶ *Order* at ¶¶ 142-43.

LNP-related costs. As discussed above, rather than require ROR carriers that do not offer LNP to impose end user charges, the Commission should clarify that these carriers may include LNP-related costs in their regulated Part 32 accounts, subject to subsidiary record keeping requirements, and that they may apply normal Part 36 separations procedures and recovery methods to these costs.

This treatment would continue pending resolution of specific LNP cost recovery issues relevant to small, ROR carriers. Issues to be addressed would include the reasonableness of imposing new end user charges for LNP costs in areas where carriers and their customers may be significantly affected by increases in local rates and flat-rated charges stemming from separations reform, access reform, and universal service funding changes. The Commission may also consider, in the context of this proceeding, how special end user charges for LNP costs might be assessed by NECA pooling companies (if such an approach is found to be justified) and how ongoing costs will be recovered by ROR ILECs after the five-year period contemplated in the *Order*.

Respectfully submitted,

NATIONAL EXCHANGE
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July 29, 1998

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served this 29th day of July, 1998, by hand delivery or by mailing copies United States Mail, first class postage paid, to the persons listed below.

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